

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAVID KING,

Plaintiff,

v.

9:16-CV-1298 (BKS/DEP)

ANTHONY J. ANNUCCI, *et al.*,

Defendants.

Appearances:

David King
15-R-0663
Marcy Correctional Facility
P.O. Box 3600
Marcy, NY 13403
Plaintiff, pro se

Mark G. Mitchell, Esq.
Hon. Eric T. Schneiderman
Office of New York State Attorney General
The Capitol
Albany, NY 12224
Attorney for Defendants

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff David King, a former New York State inmate at Franklin Correctional Facility, commenced this civil rights action on October 31, 2016 asserting claims under 42 U.S.C. § 1983 arising out of his incarceration. Dkt. No. 1. On June 1, 2017, Defendants notified the Court that Plaintiff had been released from custody on May 11, 2017; Defendants sought an order directing Plaintiff to notify the Court and Defendants of his current address. Dkt. No. 16. The Court granted that request, and directed Plaintiff to update the Court and Defendants' counsel with his

new address within thirty days. Plaintiff failed to do so. On July 24, 2017, Defendants filed a letter motion seeking the dismissal of Plaintiff's complaint for failure to notify the Court and Defendants' counsel of his change of address. Dkt. No. 19. This matter was referred to United States Magistrate Judge David E. Peebles who, on August 3, 2017, issued a Report and Recommendation recommending that Defendants' request for dismissal be granted. Dkt. No. 20. Magistrate Judge Peebles advised the parties that, under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the Report, and that the failure to object to the Report within fourteen days would preclude appellate review. Dkt. No. 20, pp. 9-10. No objections to the Report and Recommendation have been filed; the Report and Recommendation sent to Plaintiff was returned as undeliverable on August 16, 2017. Dkt. No. 21.

As no objections to the Report and Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report and Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report and Recommendation for clear error and found none, the Court adopts it in its entirety.

For these reasons, it is

ORDERED that the Report and Recommendation (Dkt. No. 20) is **ADOPTED** in its entirety; and it is further


ORDERED that Defendants' letter motion (Dkt. No. 19) seeking the dismissal of Plaintiff's complaint (Dkt. No. 1) is **GRANTED**, and that Plaintiff's complaint is **DISMISSED** in its entirety under Rule 41(b) of the Federal Rules of Civil Procedure based upon his failure to prosecute and comply with this Court's orders and local rules of practice; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with

the Local Rules.

IT IS SO ORDERED.

Dated: September 5, 2017
Syracuse, New York


Brenda K. Sannes
U.S. District Judge